

BEFORE THE
BOARD OF TRUSTEES OF THE
FORTUNA UNION HIGH SCHOOL DISTRICT

In the Matter of the Accusation Against:

MATT MALKUS,

JACK MILLSAP,

and

BRETT ROSLOSNIK,

Respondents.

OAH No. 2012030975

PROPOSED DECISION

Administrative Law Judge Dianna L. Albin, State of California, Office of Administrative Hearings, heard this on April 20, 2012, in Eureka, California.

Nancy L. Klein, Attorney at Law, School and College Legal Services of California, represented the Fortuna Union High School District.

Matthew Malkus, respondent, was present and represented himself.

The matter was submitted for decision on April 20, 2012.

ISSUES

1. Was Notice of release properly made by the District on a certificated administrator?

2. Does a “clear multiple subject teaching credential” entitle the respondent to remain employed by the District in a position he is currently credentialed and competent to teach?

FACTUAL FINDINGS

1. The parties stipulated that the District has complied with all procedural requirements of Education Code sections 44949 and 44955.

2. Fortuna Union High School District consists of three high schools: Academy of the Redwoods (grades 9 through 12); Fortuna High School (grades 9 through 12); and East High Continuation High School (grades 10 through 12).

3. On March 8, 2012, the Board of Trustees of the Fortuna Union High School District adopted Resolution No. 2011-12.05, in which the Board resolved to reduce or discontinue the following particular kinds of services at the end of the 2012-2013 school year:

Eliminate the equivalent of 1.0 (F.T.E.) ¹	Opportunity Class Teacher
Eliminate the equivalent of 1.0 (F.T.E.)	Independent Study teacher
Eliminate the equivalent of 0.4 (F.T.E.)	English Teacher
Eliminate the equivalent of 0.4 (F.T.E.)	Mathematics Teacher
Eliminate the equivalent of 1.0 (F.T.E.)	Elementary School Teacher

The resolution directed the District's Superintendent, or his designee, to initiate procedures to not reemploy the equivalent of 3.8 F.T.E. certificated employees of the District pursuant to Education Code sections 44949 and 44955 for the 2012-2013 school year.

The District's elimination of Eliminate the equivalent of 1.0 (F.T.E.) Elementary School Teacher

4. On March 8, 2012, District Superintendent Glen Senestraro sent notice to four certificated employees of his recommendation that their services would be reduced or discontinued for the 2012-2013 school year. Three certificated permanent employees (respondents Jack Millsap, Brett Roslosnik, and Matthew Malkus) filed a request for hearing and a notice of defense. Respondents Roslosnik and Millsap withdrew their requests for a hearing and notices of defense and were not disputing their lay off notices. The fourth teacher to receive notice, Lacey Sandborn, did not file a request for hearing. In this proceeding, there is one respondent, Matthew Malkus.

5. The Board's decision to reduce 3.8 full-time equivalent positions was based on a combination of declining enrollment and an anticipated loss of revenue from the State of California for the 2012-2013 school year.

6. On March 8, 2012, the Board of Trustees of the Fortuna Union High School District adopted Resolution No. 2011-12.06, in which the Board adopted a resolution of final release from certificated administrative assignment for the 2012-2013 school year as set forth below:

WHEREAS, Education Code section 44951 authorizes this Board of Trustees to give notice to a certificated employee serving in a certificated employee serving in a certificated

¹ F.T.E. refers to full-time equivalent.

administrative position that he/she shall be released from his/her position for the following school year.

WHEREAS, Matthew Malkus (“Employee”), is a certificated administrative employee whose position is 1.0 Principal (Academy of the Redwoods) in this District;

WHEREAS, the Board of Trustees has received a recommendation from the District Superintendent not to reemploy Employee in the same position for he 2012-2013 school year;

WHEREAS, the Board of Trustees has discussed the recommendation made by the Superintendent and concurs in said recommendation.

7. On March 9, 2012, Matthew Malkus was personally served with a Notice of Release from an Administrative Position pursuant to Education Code section 44951, informing him that he will not be re-employed as a 1.0 F.T.E. certificated administrator employee for the 2012-2013 school year. Malkus signed and acknowledged receipt of the notice of release on March 9, 2012.

8. Matthew Malkus was employed by the District pursuant to a contract for the 2011-2012 school year, commencing on July 1, 2011 and terminating on June 30, 2012. Malkus has served as a site administrator since 2008 and pursuant to Education Code section 44956.5 has earned three years seniority.

9. The District, without cause, can decide not to re-employ an administrator in an administrator’s position at the end of the term of the contract.

10. During the 2011-2012 school year, Malkus was the on-site administrator (principal) at the Academy of the Redwoods, in the Fortuna Union High School District. Malkus’ first date of paid service with the District was July 1, 2008. On the District’s seniority list his credentials are listed as a “Clear Administrative Services” credential and a “Clear Multiple Subject” credential. Malkus has no right to bump any other teacher and consequently, the tie breaking criteria is not applicable.

11. Malkus’ “Clear Multiple Subject” credential, according to the California Commission of Teacher Credentialing, authorizes him to teach the following classes:

This credential authorized the holder to teach all subjects in a self-contained class and, as a self-contained classroom teacher, to team teach or to regroup students across classrooms, in grades twelve and below, including preschool, and in classes organized primarily for adults. In addition, this credential authorizes the

holder to teach core classes consisting of two or more subject to the same group of students in grades five through eight, and to teach any of the core subjects he or she is teaching to a single group of students in the same grade level as the core for less than fifty percent of his or her work day.

12. Malkus submitted evidence at hearing that reflects during the 2011-2012 school year, while the principal at the Academy of the Redwoods, Malkus taught independent study classes to District students. For the 2011-2012 school year at the Academy of the Redwoods, there are two certificated and competent permanent employees with more seniority than Malkus, teaching independent study classes. The District's resolution eliminates the equivalent of 1.0 F.T.E. Independent Study Teacher for the 2012-2013 school year.

13. No certificated employee junior in seniority to Malkus is being retained by the District to perform services that Malkus is certificated and competent to render with his multiple subject teaching credential.

14. The reduction or discontinuation of particular kinds of services is related to the welfare of the schools and the pupils thereof.

LEGAL CONCLUSIONS

1. Jurisdiction for this proceeding exists pursuant to Education Code sections 44949 and 44955, and all notices and other requirements of those sections have been provided as required by law.

Release of certificated administrator

2. Administrators are subject to layoff in the same manner as teachers. They hold their administrative positions at the pleasure of the district and therefore have no statutory right to maintain them. (*Hentschke v. Sink* (1973) 34 Cal.App.3d 19.) However, administrators hired into the district after July 1, 1983, earn no seniority for bumping purposes unless they are site administrators, in which case they can earn a maximum of three years' seniority. (Ed. Code, § 44956.5.)

By reason of the matters set forth in Findings 6 through 9, the District properly issued notice to Matthew Malkus that he would not be re-employed as a certificated administrator for the 2012-2013 school year pursuant to Education Code section 44951.

Multiple subject credential

3. Pursuant to Education Code section 44956.5, as a site administrator at the Academy of the Redwoods, Matthew Malkus is entitled to three years' seniority toward a teaching position he is certificated and competent to teach. However, there are no positions

available in the District. Consequently, cause exists because of the reduction of particular kinds of services pursuant to Education Code section 44955 to give notice to respondent Mathew Malkus that 1.0 F.T.E. of his services will not be required for the 2012-2013 school year. The cause relates solely to the welfare of the schools and its pupils within the meaning of Education Code section 44949.

ORDER

Notice may be given to respondent Matthew Malkus that his service will be not be needed for the 2012-2013 school year because of the reduction of particular kinds of services.

DATED:

DIANNA L. ALBINI
Administrative Law Judge
Office of Administrative Hearings